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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. 381

CONE MILLS CORPORATION,

Petitioner

v.

TEXTILE WORKERS UNION OF AMERICA

Respondent

PETITION FOR A WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

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Petitioner prays that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit dated and entered in the above cause on 16 June 1959 (Appendix B), reversing a judgment of the United States District Court for the Middle District of North Carolina (Joint Appendix, p. 69).

OPINIONS BELOW

The opinion of the Court of Appeals, which is appended to this petition as Appendix A, is not yet reported.

The opinion of the United States District Court is reported in 166 F. Supp. 654, and appears in the printed Joint Appendix (pp. 59-69).

JURISDICTION

The judgment of the Court of Appeals sought to be reviewed was dated and entered on 16 June 1959 (Appendix B. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (1).

QUESTIONS PRESENTED

1. Whether, in an action brought by a union against an employer under sec. 301(a) of the Labor Management Relations Act of 1947, the District Courts of the United States have jurisdiction to render a money judgment for the benefit of the employees represented by the union upon an arbitration award adjudging liability against the employer for varying sums of money due the several thousand named individual employees involved, representing deferred wages for vacation or holiday pay, where no employee's claim is greater than $30.00 and no diversity of citizenship exists between the employer and the employees who are named in the complaint to receive such sums pursuant to the award.

2. Whether, if sec. 301 is held to vest jurisdiction in the United States District Court over the instant action brought by a union against an employer, sec. 301 to that extent is invalid, null and void as (a) being in violation of Article III, Section 2 of the Constitution of the United States; or (b) denying the petitioner equal protection of the law under the Fifth Amendment of the Constitution of the United States.

STATUTES INVOLVED

The pertinent statutory and constitutional provisions involved are set forth in Appendix C as follows: Labor Management Relations Act of 1947, 61 Stat. 156, 29 U.S.C. sec. 185; General Statues of North Carolina, sections 95-36.1, et seq.; Art. III, Section 2, and Fifth Amendment of U. S. Constitution.

STATEMENT OF THE CASE

Petitioner, Cone Mills Corporation (hereinafter referred to as "the Company"), is a North Carolina corporation having textile manufacturing plants at Reidsville and

Greensboro, North Carolina, known as the Edna, White Oak and Proximity plants (J. A. 2). It manufactures cloth at these plants and its activities affect interstate commerce. The respondent, Textile Workers Union of America (hereinafter referred to as "the Union"), is a voluntary unincorporated labor organization and is recognized by the Company as the collective bargaining agent for the employees at its three named plants (J. A. 2).

The Company and the Union entered into collective bargaining agreements which were in full force and effect at all times relevant hereto (J. A. 2). The agreements provided that between 1 June and 1 September 1957 the Company agreed to give a one-week vacation with pay to the employees at these plants (J. A. 16). The Company closed the plants for one week in July 1956 and paid the employees therefor, and closed the Proximity and White Oak plants for a "Christmas-New Year's vacation period" and the Edna plant for "Christmas holidays," all for the period 21 December 1956 to 1 January 1957, but did not pay the employees therefor (J. A. 21-2).

Thereupon the employees at the three plants filed their claims for benefits with the Employment Security Commission of North Carolina for this week of unpaid inactivity. The claims were denied by the Commission on the ground that under the Employment Security Law of North Carolina employees are not entitled to benefits during a period of at least two weeks in a year when they are on vacation, and that "under the provision of the law it is the prerogative of the employer to grant a vacation at any time it sees fit" (J. A. 32). This ruling of the Commission was affirmed by the Supreme Court of North Carolina; *In re Southern*, 247 N. C. 544, 101 S. E. 2d 327 (Jan. 1958).

In January 1957 the Union filed written grievances at the three plants alleging that the Company had violated the agreements by declaring the one week vacation without pay, and requested that "all employees be paid for all time lost," or to "make the employees whole for their loss of money" (J. A. 47-9). These three grievances were carried through the grievance procedure and not having been settled satisfactorily to the Union, it then submitted them to arbitra-

tion. At the outset of the arbitration hearing on 23 July 1957 before a three man panel, the Company contended that the case was not arbitrable (J. A. 22). A majority of the panel entered its award on 11 September 1957, sustaining the grievances and awarding that:

> ". . . the Company is obligated to make the employees whole such damages as they sustained or shall sustain from such breach, namely, the amount of unemployment benefits which they fail to receive because of such breach." (J. A. 19).

After the Supreme Court of North Carolina affirmed in January 1958 the ruling of the Employment Security Commission that the employees were not entitled to benefits for the Christmas week, the Company advised the Union that it refused to abide by the arbitration award. On 9 April 1958 the Union brought the present action against the Company in the United States District Court for the Middle District of North Carolina alleging that the suit arose under sec. 301 of the Labor Management Relations Act and that the Company had violated the agreements by its refusal to abide by the arbitration award, with the result that "the plaintiff and the employees listed on Exhibits A, B and C attached hereto have been and are wrongfully denied the benefits of said contracts, Exhibits 1, 2 and 3 attached hereto" (J. A. 5). The complaint prayed affirmance and enforcement of the arbitration award, as well as a declaratory judgment that the award was final and binding upon the Company.

The Company filed its answer on 20 May 1958 in which it alleged as a defense that the district court lacked jurisdiction to grant the remedy requested, and specifically alleged that sec. 301 of the Labor Management Relations Act of 1947, insofar as it purports to vest jurisdiction of the instant action in the United States District Court, is invalid, null and void in violation of the Constitution of the United States. The answer also met the allegations of the complaint.

A pretrial order on 25 July 1958 provided that the parties had agreed that "the case might be submitted to and

decided by the Court on the basis of the pleadings and exhibits thereto and the additional stipulation which will be filed by the parties and that neither party desires to introduce any evidence, it being conceded that the rights of the parties are to be determined as a matter of law from the pleadings, exhibits and stipulations" (J. A. 55). A hearing was held before the District Court on 6 October 1958, and the Court entered its final judgment on 31 October 1958 dismissing the action for want of jurisdiction (J. A. 69). The Court did not pass upon the merits of the action.

On appeal, the Court of Appeals reversed (Appendix A), holding that since sec. 301 (a) has been construed by this Court in *Textile Workers Union v. Lincoln Mills*, 353 U. S. 448, as conferring jurisdiction upon the district courts of the United States to grant specific performance to enforce an agreement to arbitrate unresolved grievances, "by parity of reasoning the Court should enforce arbitration awards, for this is but a short step in the development of a substantive federal law to meet the problems as they arise in this area." The Court of Appeals noted that the District Court had concluded that the instant case was controlled by the decision of this Court in *Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp.*, 348 U. S. 437, for the reason that in both cases the Union was seeking for the employees money due for past services, and while the Court conceded that such analogy was "not without persuasive force" yet it considered that the later decision in *Lincoln Mills* vested jurisdiction in the federal courts. The Court of Appeals did not specifically pass upon the constitutional issues as briefed and presented, although it did observe that this Court in *Lincoln Mlils* had found no substantial constitutional difficulty upon the record there presented. The Court noted that questions relating to the validity of the arbitration award were not being considered by it for the reason that the District Court did not reach them, and accordingly "they should be considered by the District Court upon the remand."[1]

[1]Obviously the court's ruling as to the enforceabililty of the arbitration award is "fundamental to the further conduct of the case." Cf. *United States v. General Motors Corp.*, 323 U. S. 373, 377 (1945); *Land v. Dollar*, 330 U. S. 731, 734 (1947).

REASONS FOR GRANTING THE WRIT

This case presents important questions of federal laws as to the scope and constitutionality of sec. 301 (a) of the Labor Management Relations Act of 1947 to actions brought under that section to enforce arbitration awards rendered. The questions are of wide general interest and importance, requiring that their resolution be authoritatively declared by this Court.

1. The Federal Questions Were Decided in a Way Probably in Conflict With Applicable Decisions of This Court.

The decision of the Court of Appeals in the instant case concerns the same issue, and is controlled by the decision of this Court in *Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp.*, 348 U. S. 437 (1955). The instant action was brought by the Union to enforce personal rights of several thousand employees whose names are set forth in exhibits to the complaint. The award of the majority of the Board of Arbitrators was:

> "... that the Company is obligated to make the employees whole such damages as they sustained or shall sustain from such breach namely the amount of unemployment compensation which they fail to receive because of such breach" (J. A. 19).

If the award is enforced it would result in each of the employees involved receiving varying sums between $20 and $30. *Westinghouse* involved the same problem. In both cases the Company is alleged to have violated the contract by withholding a certain amount of pay due the employees. In both cases the employees were not made parties to the suit. In both cases the relief requested was for a recovery of money for distribution to the respective individual employees.

In *Westinghouse* this Court concluded that sec. 301 did not confer jurisdiction on the federal courts where an action is brought by a labor union on behalf of employees for accrued wages which the employer refuses to pay, allegedly

in violation of a collective bargaining agreement between the union and the employer.

Mr. Justice Frankfurter stated in his opinion (p. 460):

> "There was no suggestion that Congress, at a time when its attention was directed to congestion in the federal courts, particularly in the heavy industrial areas, intended to open the doors of the federal courts to a potential flood of grievances based upon an employer's failure to comply with the terms of a collective agreement relating to compensation, terms peculiar in the individual benefit which is their subject matter and which, when violated, give a cause of action to the individual employee. The employees have always been able to enforce their individual rights in the state courts. (cases cited) . . .
>
> "Nowhere in the legislative history did Congress discuss or show any recognition of the type of suit involved here, in which the union is suing on behalf of employees for accrued wages. Therefore, we conclude that Congress did not confer on the federal courts jurisdiction over a suit such as this one."

In a concurring opinion, Mr. Chief Justice Warren and Mr. Justice Clark noted (p. 461):

> "For us the language of sec. 301 is not sufficiently explicit nor its legislative history sufficiently clear to indicate that Congress intended to authorize a union to enforce in a federal court the uniquely personal right of an employee for whom it had bargained to receive compensation for services rendered his employer."

And Mr. Justice Reed wrote in his concurring opinion:

> "The reason, I think, that this union cannot recover from the employer in this suit under sec. 301 is that the claim for wages for the employees arises from separate hiring contracts between the

> employer and each employee. The union does not undertake to do work for the employer or even to furnish workers. The duty, if any there be, to pay wages to an employee arises from the individual contract between the employer and employee, not from the collective bargaining agreement. Therefore there is set out no violation of a contract between an employer and a labor organization as is required to confer jurisdiction under sec. 301. The facts show an alleged violation of a contract between an employer and an employee — a situation that is not covered by the statute."

If *Westinghouse* were the only ruling by this Court dealing with the scope of sec. 301 then obviously the district courts would lack jurisdiction of an action to enforce an arbitration award such as presented here. The Court of Appeals considered, however, that *Textile Workers Union v. Lincoln Mills*, 353 U. S. 448 "cast a clearer light on this field of litigation," and that its teaching was "to place the enforcement of the arbitration clauses of labor contracts in the hands of the federal courts even if the employees are the ultimate beneficiaries" (Appendix A, p. A-5). Perhaps this was the intended effect of *Lincoln Mills* but there exists considerable confusion in the minds of the lower courts, labor specialists and scholars, and the parties to collective agreements as to just what vitality *Westinghouse* possesses in the light of *Lincoln Mills*. It would appear that the Court itself considers that *Lincoln Mills* did not change the ruling of *Westinghouse* in this respect for Mr. Justice Douglas stated in footnote 6 (p. 456) of his opinion for the majority that Westinghouse "is quite a different case. There the Union sued to recover unpaid wages on behalf of some 4,000 employees. The basic question concerned the standing of the union to sue and recover on those individual employment contracts." And Mr. Justice Burton, with whom Mr. Justice Harlan joined, said in a concurring opinion (p. 460):

> "The District Court had jurisdiction over the action since it involved an obligation running to a

> union—a union controversy—and not uniquely personal rights of employees sought to be enforced by a Union. Cf. Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp. . . ."

Confusion and uncertainty prevail in this area of labor relations. Some courts have apparently construed this Court's holding in Westinghouse narrowly. See, for example, Circuit Judge Learned Hand's analysis of that decision in *Council of Western Electric Technical Employees v. Western Electric Co.*, 238 F. 2d 892, 895 (C. A. 2nd Cir.); and another court considers that Lincoln Mills "beat a retreat from Westinghouse" (*IBEW v. Mississippi Valley Electric Co.*, *F. Supp* ; 44 LRRM 2674 - (D. C. La.) By contrast, other courts have concluded that Westinghouse's teaching that sec. 301 does not confer jurisdiction over an action by a union to enforce personal rights of employees was not modified, overruled or eroded by Lincoln Mills. Thus, "In our opinion, neither the result nor the rationale of the recent decision in Lincoln Mills undermines the authority of the Westinghouse case"—*Silverton v. Valley Transit Cement Co., Inc.*, 249 F. 2d 409, 410 (C. A. 9th Cir.); "We find nothing here that modifies Westinghouse"—*Local Lodge* 2040, *IAM v. Servel, Inc.*, F. 2d 44 LRRM 2340 (C.A. 7th Cir. - 1959). Still others, including the Fourth Circuit, apparently concede that there is real ground for the uncertainty that exists on the subject, saying (Appendix A, p. A-7):

> "Confronted by these two important decisions the District Judge was called on to decide which controlled the pending case, and he reached the conclusion that *Westinghouse* was the more apposite since in the pending case, as in *Westinghouse*, the ultimate goal of the union was to recover for its constituents money due them for past services. This analogy, it must be conceded, is not without persuasive force, but we think that it is not controlling in view of the conclusion in the later decision that Congress intended to

> place the enforcement of the arbitration clauses of labor contracts in the hands of the federal courts even if the employees are the ultimate beneficiaries."

And the Court of Appeals for the Sixth Circuit was divided on the precise issue of whether the federal courts have jurisdiction to enforce arbitration awards, Circuit Judge Miller deciding in the negative and Judge Martin deciding in the affirmative: *A. L. Kornman Company v. Amalgamated Clothing Workers*, 264 F. 2d 733 (pet. for cert. No. 131, this term).

II. *The Decision is Probably in Conflict With the Decisions of Other Courts of Appeals on the Same Matter.*

The decision of the Court of Appeals in the instant case probably conflicts with the decisions of the Court of Appeals for several circuits:

In *Communication Workers of America v. Ohio Bell Tel. Co.*, 265 F. 2d 221 (C.A. 6th Cir. - 1959), the union brought an action against the employer seeking vacation pay for its employees under a contract between the parties. The District Court for the Northern District of Ohio (160 F. Supp. 822) dismissed the action for lack of jurisdiction holding that "vacation allowances, termination allowances, and sickness and death benefits fall within the same category as wages and are uniquely personal to the employees." It further held:

> "Westinghouse is plain authority for the proposition that the Union may not maintain an action in the District Court to collect wages due to employees. *The Union in asking for specific enforcement of the agreement instead of individual judgments in favor of the employees did not change the substance of the action. The result was the same.*" (Italics Ours).

The Court of Appeals for the Sixth Circuit affirmed the judgment of the District Court "upon the findings of fact and opinion of Judge Weick."

In *Local Lodge* 2040, *IAM v. Servel, Inc.*, F. 2d , 44 LRRM 2340 (C.A. 7th Cir. - 1959), the action was brought by two labor unions and a large number of employees against the employer. The complaint charged a breach of the agreement and sought a declaratory judgment that the agreement was then in force and a mandatory injunction ordering the employer to allow its employees to exercise pension and insurance rights provided for therein. It prayed for a money judgment in favor of the employees on their claims for wages arising out of holiday pay allegedly due them for Christmas Day, 1957, and vacation pay for the year 1958. The district court granted the defendant's motion to dismiss the complaint for want of federal jurisdiction, and this judgment was affirmed by the Court of Appeals for the Seventh Circuit. The court held that even though the unions sought a mandatory injunction ordering the employer to comply with the terms of the contract by permitting the employees to exercise pension and insurance rights provided for therein, yet sec. 301 (a) does not confer jurisdiction on the district court to entertain such an action, saying:

> "We can come to no other conclusion but that this is an action for the recovery of individual benefits due employees, and, as such, is clearly within the scope of the holding of the Supreme Court of the United States in Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp., 348 U. S. 437 (1954)."

Significantly, in footnote 4 of its opinion, the court in *Servel* cites with agreement the district court judgment in the instant *Cone Mills* case (166 F. Supp. 654) as being controlled by Westinghouse, and thereby by implication disagrees with the Court of Appeals for the Fourth Circuit which had rendered its opinion herein prior to the decision in Servel by the Seventh Circuit.

For rulings of other courts of appeals showing an apparent conflict with the instant decision of the Court of Appeals for the Fourth Circuit, see *Silverton v. Valley Transit*

Cement Company, Inc. 249 F. 2d 409 (C. A. 9th - 1957); *United Steelworkers v. Pullman-Standard Car Mfg. Co.*, 241 F. 2d 547 (C.A. 3rd - 1957); *United Electrical, Radio and Machine Workers of America v. General Electric Co.*, 231 F. 2d 259, 261 (C. A. D. C. - 1956); and *Intl. Garment Workers Union v. Jay-Ann Co.*, 228 F. 2d 632 (C.A. 5th - 1956).

III. *IF SECTION* 301 *IS HELD TO APPLY TO THIS ACTION, SAME VIOLATES FEDERAL CONSTITUTION.*

The answer of the petitioner in the district court raised as a separate defense that if it be held that the action arises under sec. 301 then that section is invalid, null and void as being in violation of the Constitution of the United States (J. A. pp. 41-2). The constitutional issue was briefed and argued in the district court but it became unneccessary for that court to pass upon the issue because of its disposition of the action on jurisdictional grounds. The constitutional issue was likewise briefed and argued in the Court of Appeals but that court did not directly pass on the issue.

1. *Section* 301, *as Construed by the Court of Appeals, Violates Article* III, *Section* 2 *of the Constitution of the United States.*

In *Westinghouse*, the Court did not reach this constitutional issue due to its disposition of the action on jurisdictional grounds (348 U.S. 347, at 459-60, 461). While it is true that in *Lincoln Mills* the majority held that "a case or controversy arising under Sec. 301(a) is, therefore, one within the purview of judicial power as defined in Article 3" (p. 457), yet Mr. Justice Frankfurter was positive in his opinion that Sec. 301 "is unconstitutional in cases such as the present ones where it provides the sole basis for exercise of jurisdiction by the federal courts" (p. 484). Mr. Justice Harlan and Mr. Justice Burton concurred in the result of the majority on the ground that "some federal rights may necessarily be involved in a sec. 301 case."

But the instant action cannot in any sense be said to have arisen under sec. 301 (a), a law of the United States. That law requires an employer and union to bargain collectively and to reduce their agreement to writing, but in no sense of the word does it give legal force and effect to their agreement made following bargaining. That force depends solely upon state law. An independent action such as the instant one seeking the remedy of enforcement of a contract arises only under the contract itself and under the laws of the State of North Carolina, and statutory procedure is provided by the state for the enforcement of such labor arbitration awards (Appendix C).

2. *Section 301, as Construed by the Court of Appeals, Denies Petitioner Equal Protection of the Law and is Therefore in Violation of the Fifth Amendment.*

The federal courts have uniformly dismissed for lack of jurisdiction actions brought under Sec. 301 by an employer against a union to vacate or modify an arbitration award. Thus, in *Mengel Co. v. Nashville Paper Prod. & Spec. Wkrs. Union*, 221 F. 2d 644 (C. A. 6th Cir.), the employer brought an action in the district court to have the arbitration award declared invalid and to enjoin the union from taking any action to enforce the award. The court held that "in our opinion, the present action is not one for violation of a contract within the meaning of Section 301", but rather is an assertion of a right not to be bound by an arbitration award, and therefore dismissed the complaint. Mr. Justice Stewart, then a circuit judge, dissented in the Mengel case. Similarly, in *Int'l. News Service v. Gereczy*, (S. D. N. Y.) 160 F. Supp. 5, the employer brought a proceeding in the state court against the union for an order to vacate an arbitration award rendered in favor of the union. The union removed the action to the federal court on the ground that it asserted a right arising under the laws of the United States, namely sec. 301. The court remanded the action to the state court, holding:

> "The company's motion in the State court attacking the validity of the award is not an action for

violation of a contract between an employer and a labor organization representing an employee, and as such the district court would not have jurisdiction."

Thus, sec. 301 of the Act, as construed by the Court of Appeals in the instant action, grants a labor union the right to enforce an arbitration award in the district court while an employer is required to submit its action for vacation or modification of the same type of award to a state court. This disparate treatment denies employers equal protection of the law. "Construed this way, the Act creates a glaring inequality of treatment between" a union and an employer. The unfairness of this discriminatory procedure seems manifest. The language in the dissenting opinion of Mr. Justice Douglas, the Chief Justice, and Mr. Justice Black in *Union Pacific R. R. v. Price*, 360 U. S. ; 3 L ed. 2d. 1460 (1959), is quite apposite to the instant case:

> "Respondent argues that it would be grossly unfair to construe sec. 3 First (m) so as to deny judicial review to a defeated employee but not to a defeated railroad. That would indeed be the result if an employee asserting a money claim cannot get court review if he loses, while the employer can obtain it if the employee wins. It is difficult for me to believe that Congress designed and approved such a lopsided, preferential system. No rhyme or reason is apparent for such discrimination. The attempt throughout was to equalize the advantages of the contending parties, not to prefer the employer who had long been dominant.
>
> * * * *
>
> "In my view the Court's contrary reading of sec. 3 raises questions of constitutional magnitude concerning the Railway Labor Act. For if an employee is to be denied any review of the Board's decision when the railroad prevails,

> while the latter can obtain judicial review with a jury trial before complying with a Board order, there would appear to be an unjustifiable discrimination in violation of the Due Process Clause of the Fifth Amendment."

It is well known that the National Labor Relations Act was amended in 1947 for the purpose, among others, of equalizing duties and rights between employers and unions. The preamble to the Act expressly provides:

> "An Act to amend the National Labor Relations Act, to provide additional facilities for the mediation of labor disputes affecting commerce, to equalize legal responsibilities of labor organizations and employers, and for other purposes."

See discussions in *Lincoln Mills* and *Westinghouse* to same effect. It is clear that Congress did not intend by the enactment of sec. 301 in 1947 that the doors of the federal courts should be open to a labor union for the enforcement of an arbitration award and at the same time be closed to an employer for the setting aside or modification of the same award.

IV. *IMPORTANCE OF THE QUESTIONS PRESENTED WHICH HAVE NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.*

The foregoing questions of federal law are substantial and of importance in the construction and administration of the Labor Management Relations Act, 1947, and should be settled by this Court. Arbitration awards rendered under labor agreements in favor of unions, employers, and employees are numerous, and the number of such awards that have been brought before the state and federal courts for judgments of enforcement, modification, or setting aside has steadily increased over the past ten years. The lower federal courts will more and more be faced with the difficult problems as to whether they have jurisdiction to enforce or set aside some, or all, of these awards, or whether the state courts have jurisdiction, or whether the

federal and state courts have concurrent jurisdiction. Many states presently have statutory provisions for the enforcement of arbitration awards issued in labor disputes similar to those of the State of North Carolina (Appendix C).

An authoritative resolution by this Court of the questions will have immediate purpose far beyond the particular facts and parties here involved. Every employer and labor organization in our economic system is vitally concerned with a determination of these important issues by this Court following adequate consideration of all the implications involved. It is important to unions and employers alike that this Court hear this petition and replace confusion and uncertainty with an authoritative resolution of these far-reaching issues in the field of labor relations.

CONCLUSION

For the reasons stated, this petition for a writ of certiorari should be granted.

Respectfully sumitted

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United States Court of Appeals

FOR THE FOURTH CIRCUIT

No. 7840

TEXTILE WORKERS UNION OF AMERICA,

Appellant,

versus

CONE MILLS CORPORATION,

Appellee.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF NORTH CAROLINA, AT GREENSBORO. EDWIN M. STANLEY, DISTRICT JUDGE.

(Argued April 16, 1959. Decided June 16, 1959).

Before SOBELOFF, Chief Judge, and SOPER and HAYNSWORTH, Circuit Judges.

David E. Feller (Robert S. Cahoon, Arthur J. Goldberg and Jerry D. Anker on brief) for Appellant, and Thornton H. Brooks, (C. T. Leonard, and McLendon, Brim, Holderness & Brooks on brief) for Appellee.

SOPER, Circuit Judge:

This case involves the power of the District Court to entertain a suit to enforce an arbitration award which

was made under a collective bargaining agreement between the Cone Mills Corporation of North Carolina and the Textile Workers Union of America, an incorporated labor organization which represented the Company's employees. A dispute by the parties to the agreement as to the compensation due the employees during a vacation or layoff period was referred to arbitration and decided against the Company; but it refused to comply with the award. The present suit was then brought under sec 301 (c) of the Labor Management Relations Act, 29 U.S.C. sec 185., and the Federal Declaratory Judgment Act, 28 U.S.C. sec. 2201-2202, to secure a declaratory judgment determining the rights of the parties and to enforce the award, but the court was of the opinion that it had no jurisdiction to grant the relief and dismissed the complaint.

In December 1956, the Company declared a Christmas-New Year's vacation period from December 21, 1956 to January 1, 1957, and closed its plants. The employees received no payment during this period, since the paid vacations for the employees prescribed in the agreement had already taken place, and they were refused compensation by the State Employment Security Commission under sec. 19.13 of the North Carolina Employment Security Act, which provides that no person shall be considered available for work for any week, not to exceed two weeks, in any calendar year in which the Commission finds that his unemployment is due to a vacation.

In this situation the Union claimed that the enforced vacation was really a layoff but had been designated a vacation by the Company in order to avoid payment of increased amounts under the compensation act and that by this action the Company violated the collective bargaining agreement. Accordingly, the Union filed grievances under the provisions of the collective bargaining agreement with regard to the settlement of disputes. The agreement provided that in case these procedures failed to produce a settlement, either party could submit the dispute to a Board of Arbitration, consisting of a representative chosen by each party and one impartial member chosen jointly, and that in the absence of unanimity the decision of the im-

partial member should be final and binding on the parties and all employees. In the present case the impartial arbitrator ruled that the declaration of the vacation without pay violated the bargaining agreement. He pointed out that the usual award in cases of layoffs in violation of bargaining agreements is the full amount of pay lost as a result of the layoff; but, since the injury caused was the employees' loss of unemployment benefits, he held in his award that the employer should make the employees whole for the loss of this compensation. Subsequently the Supreme Court of North Carolina affirmed the denial of unemployment benefits, but the Company failed to comply with the award and the present suit was brought.

Jurisdiction is based on sec. 301 of the Labor Management Relations Act, 29 U.S.C. sec 185, which provides:

> (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.
>
> (b) Any labor organization which represents employees in an industry affecting commerce as defined in this chapter and any employer whose activities affect commerce as defined in this chapter shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

Although the suit was brought by the Union against the employer and the complainant seeks relief for the violation of a contract between them, the District Judge reached the conclusion that the action was in effect a suit to re-

cover from the employer sums of money due the employees for wages as compensation and was therefore, in effect, a suit for breach of contract between the employer and employees which might be brought in the state courts but was not cognizable in the federal court under the decision in *Assn. of Westinghouse Salaried Employees v. Westinghouse Elec. Corp.*, 348 U. S. 437. In that case a labor union representing 4000 employees brought suit against their employer under sec. 301 of the Labor Act and the Federal Declaratory Judgment Act to enforce a bargaining agreement between the parties and specifically to obtain a judgment against the employer in favor of individual employees for unpaid wages alleged to be due them. The collective bargaining agreement did not require arbitration of industrial disputes, so that in case of an unresolved dispute as to the application of the agreement the only remedy of the employees was to engage in a strike or to seek relief by suit in an appropriate court. The Supreme Court held that the case should be dismissed for lack of jurisdiction. Three members of the Court were of the opinion that sec. 301 did not imply the existence or the establishment of a body of general federal substantive law for application in suits under it, and since a serious constitutional question would arise if the statute were construed to authorize a suit in a federal court it should not be so interpreted. The opinion stressed the improbability that Congress, at a time when the congestion of litigation in the federal courts in certain areas was particularly heavy, intended to open the federal courts to a flood of grievances based on industrial disputes.

Two justices concurred in the result on the ground that the statute was not sufficiently explicit to indicate that Congress intended to authorize a union to enforce in a federal court the uniquely personal rights of employees to recover compensation for services rendered; and a sixth justice concurred in the result on the ground that, although Congress had constitutional power to give the federal courts jurisdiction over a cause of action for breach of contract between a union and an employer, the question before the Court involved a claim for wages under separate hiring

contracts between the employer and each employee and did not involve a violation of a contract between the union and the employer.

These divergent views naturally gave rise to doubts as to the proper interpretation of the statute and the decision became authority only for the conclusion that the federal courts were not open to suits by a union on behalf of individual employees for back wages even if they were covered by contract between the union and the employer. However, it was not long before the Court, in *Textile Workers Union v. Lincoln Mills,* 353 U. S 448, cast a clearer light on this field of litigation. That suit was brought by a union against an employer for violation of a collective bargaining agreement by refusing to submit to arbitration a dispute between the parties as to work loads and work assignments of the employees that had been processed in accordance with the procedures laid down in the agreement and had failed of settlement. The contract provided that in such event the controversy should be submitted to arbitration upon the request of either party; and the union made such a request, which the employer refused. Thereupon the union brought suit in the federal court for specific performance of the arbitration provision and the suit was determined in its favor when it was reviewed on certiorari by the Supreme Court of the United States.

The Court held that sec. 301 (b) was enacted to enable a labor organization representing employees in an industry affecting commerce to sue and to be sued as an entity, whether incorporated or not, and thus provided a remedy lacking at common law; and that sec. 301 (a) giving jurisdiction to the district court over suits for violation of labor contracts between an employer and a labor organization was more than judisdictional. It was demonstrated from the legislative history that Congress was interested not only in according a right of action in the federal courts to the party aggrieved by the violation of a labor contract, but also in promoting collective bargaining that results in an agreement on the part of the union not to strike and the

correlative agreement on the part of the employer to arbitrate grievance disputes. The Court said (pages 455-456):

> Plainly the agreement to arbitrate grievance disputes is the *quid pro quo* for an agreement not to strike. Viewed in this light, the legislation does more than confer jurisdiction in the federal courts over labor organizations. It expresses a federal policy that federal courts should enforce these agreements on behalf of or against labor organizations and that industrial peace can be best obtained only in that way.
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> * * * *
>
> It seems, therefore, clear to us that Congress adopted a policy which placed sanctions behind agreements to arbitrate grievance disputes, by implication rejecting the common-law rule, discussed in *Red Cross Line v. Atlantic Fruit Co.*, 264 U.S. 109, against enforcement of executory agreements to arbitrate. We would undercut the Act and defeat its policy if we read sec. 301 narrowly as only conferring jurisdiction over labor organizations.

In fine, the Court concluded that sec. 301 (a), in addition to conferring jurisdiction upon the courts in such matters, directed the courts to apply in the solution of labor disputes a federal substantive law "which the courts must fashion from the policy of our national labor law." Some of this substantive law, it was said, is found in the Labor Management Relations Act and more will be fashioned in deciding litigated cases in harmony with the policy of the statute as specific problems arise. No substantial constitutional difficulty was found in this course since Congress has power to regulate labor-management relations under the commerce clause of the Constitution, and Article III, Section 2 of the Constitution extends the judicial power to cases arising under the laws of the United States.

The Court pointed out in a footnote (page 456) that *Westinghouse, supra*, was a very different case since it was a suit by the union to recover unpaid wages on behalf of the employees and the basic question was whether the

union could sue and recover on individual employment contracts, while the question in the *Lincoln* case related to the right of the union to enforce an agreement to arbitrate set forth in its own contract with the employer.

Confronted by these two important decisions the District Judge was called on to decide which controlled the pending case, and he reached the conclusion that *Westinghouse* was the more apposite since in the pending case, as in *Westinghouse*, the ultimate goal of the union was to recover for its constituents money due them for past services. This analogy, it must be conceded, is not without persuasive force, but we think that it is not controlling in view of the conclusion in the later decision that Congress intended to place the enforcement of the arbitration clauses of labor contracts in the hands of the federal courts even if the employees are the ultimate beneficiaries. Such was the situation in the *Lincoln* case, where the union sought to obtain relief for the employees from work loads and work assignments, which can hardly be distinguished in principle from the recovery of wages that are overdue. Moreover, the *Lincoln* case itself was confined, in its final posture, to the issue of a monetary award, for by the time the case reached the Supreme Court the employer had gone out of business and the case had become moot except for a disputed claim for back pay for increased work loads.* Actually the only dissimilarity between the facts in the *Lincoln* case and those in the case at bar is that in the former the employer refused to enter an arbitration, while in the latter the employer refused to abide by an award after the arbitration had been concluded. If there is jurisdiction in one case it would seem there should be jurisdiction in the other.

*On the same day that the *Lincoln* case was decided the Court handed down opinions in two companion cases which also involved grievances of individual employees. *General Electric Co. v. Local 205 United Electrical Workers*, 353 U. S. 547, involved the question of the validity of the discharge of one employee and the rate of pay due another. In *Goodall-Sanford v. United Textile Workers*, 353 U.S. 550, the Court held that the District Court had jurisdiction to entertain a suit to compel arbitration where the issue was whether the employer was justified in terminating the employment of certain employees instead of laying them off and preserving their seniority and other rights.

We recognize the factual distinction upon which the employer relies in this case, between a refusal to perform an agreement to arbitrate, as in the *Lincoln* case, and a refusal of the losing party in an arbitration proceeding to accept and comply with the award of the arbitrator as in the case at bar. But we think that in order to carry out the teaching of the *Lincoln* case the distinction must be disregarded. The purpose of Congress to give effect to employer-union contracts and to afford full relief for breaches of those contracts would be frustrated if the courts should decree specific performance to agreements to arbitrate but deny enforcement to arbitration awards which the parties have agreed in advance to accept. In both cases the right of action is based in the last resort on breach of contract between the parties (Williston on Contracts, Vol. 6 Sec. 1927) so that jurisdiction comes within the literal terms of the statute; and relief in the form of specific performance is as appropriate and as necessary in one case as the other to effectuate the Congressional will. Under the *Lincoln* decision we are no longer inhibited by the old rule that the courts will not give specific performance to agreements to arbitrate. By parity of reasoning the court should enforce arbitration awards, for this is but a short step in the development of a substantive federal law to meet the problems as they arise in this area. If arbitration can be specifically enforced, the court should have power to afford complete relief by enforcing the award. As Mr. Justice Burton concurring in the *Lincoln* case said, 353 U.S. 460, "having jurisdiction over the suit the court was not powerless to fashion an appropriate federal remedy."*

In accord is the decision in *Kornman Co. v. Clothing Workers*, 6 Cir., 264 F. 2d 733.

In its brief in the pending case the Union discusses not only the question of the jurisdiction of the court to en-

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*See also *Terrell v. Allison*, 88 U. S. 289; *Ober v. Gallagher*, 93 U.S. 199, 206; *Ward v. Todd*, 103 U.S.327; *Hartford Accident and Indemnity Co. v. Southern Pacific Co.*, 273 U.S. 207, 217-18; *Alexander v. Hillman*, 296 U.S. 222, 242; 19 Am. Jur., Equity, Sec. 127.

force the arbitration agreement, but also other questions relating to the validity of the award, including the scope of the grievances submitted to arbitration, the finality of the decision and the bias and partiality of the arbitrator. The District Judge did not reach these questions since he came to the conclusion that the court lacked jurisdiction to entertain the case. We do not consider them in this opinion; but they should be considered by the District Court upon the remand.

The judgment of the District Court is therefore reversed and the case remanded for further proceedings in accordance with this opinion.

Reversed and remanded.

JUDGMENT
UNITED STATES COURT OF APPEALS
FOR THE
FOURTH CIRCUIT

No. 7840

TEXTILE WORKERS UNION OF AMERICA,

APPELLANT,

vs.

CONE MILLS CORPORATION,

APPELLEE

APPEAL FROM the United States District Court for the Middle District of North Carolina.

THIS CAUSE came on to be heard on the record from the United States District Court for the Middle District of North Carolina, and was argued by counsel.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court appealed from, in this cause, be, and the same is hereby, reversed with costs; and that this cause be, and the same is hereby, remanded to the United States District Court for the Middle District of North Carolina, at Greensboro, for further proceedings in accordance with the opinion of the Court filed herein.
June 16, 1959.

MORRIS A. SOPER
United States Circuit Judge

STATUTES INVOLVED

Labor Management Relations Act, 1947

61 Stat. 156, 29 U.S.C. Sec. 185.

Sec. 301. (a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any District Court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) Any labor organization which represents employees in an industry affecting commerce as defined in this Act and any employer whose activities affect commerce as defined in this Act shall be bound by the acts of its agents. Any such labor organization may sue or be sued as a entity and in behalf of the employees whom it represents in the Courts of the United States. Any money judgment against a labor organization in a District Court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(c) For the purposes of actions and proceedings by or against labor organizations in the District Courts of the United States, District Courts shall be deemed to have jurisdiction of a labor organization (1) in the District in which such organization mantains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(d) The service of summons, subpoena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

(e) For the purposes of this section, in determining whether any person is acting as an "agent" of another

person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

* * * * *

NORTH CAROLINA STATUTES

Chapter 1045, Public Laws of 1945; Chapter 1103, Public Laws of 1951

"G.S. 95-36.1—*Declaration of Policy*. It is hereby declared as the public policy of this State that the best interests of the people of the State are served by the prompt settlement of labor disputes; that strikes and lockouts and other forms of industrial strife, regardless of where the merits of the controversy lie, are forces productive ultimately of economic waste; that the interests and rights of the consumers and the people of the State, while not direct parties to such disputes, should always be considered, respected and protected; and, where efforts at amicable settlement have been unsuccessful, that the voluntary arbitration of such disputes will tend to promote permanent industrial peace and the health, welfare, comfort and safety of the people of the State. To carry out such policies, the necessity of the enactment of the provisions of this article is hereby declared as a matter of legislative determination."

"G.S. 95-36.2—*Scope of Article*. The provisions of this article shall apply only to voluntary agreements to arbitrate labor disputes including, but not restricted to, all controversies between employers, employees and their respective bargaining representatives, or any of them, relating to wages, hours, and other conditions of employment."

. . . .

"G.S. 95-36.8—*Enforcement of Arbitration Agreement and Award.* (a) Written agreements to arbitrate labor disputes, including but not restricted to controversies relating to wages, hours and other conditions of employment, shall be valid, enforceable and irrevocable, except upon such grounds as exist in law or equity for the rescission or revocation of any contract, in either of the following cases:

(1) Where there is a provision in a collective bargaining agreement or any other contract, hereinafter made or extended, for the settlement by arbitration of a controversy or controversies thereafter arising between the parties;

(2) Where there is an agreement to submit to arbitration a controversy or controversies already existing between the parties.

(b) Any arbitration award, made pursuant to an agreement of the parties described in subsection (a) of this section and in accordance with this article, shall be final and binding upon the parties to the arbitration proceedings."

* * *

Chapter 94, General Laws of 1927

"G.S. 1-544—*Agreement for Arbitration.* Two or more parties may agree in writing to submit to arbitration, in conformity with the provisions of this article, any controversy existing between them at the time of the agreement to submit. Such an agreement shall be valid and enforceable, and neither party shall have the power to revoke the submission without the consent of the other party or parties to the submission save upon such grounds as exists in law or equity for the rescission or revocation of any contract."

"G.S. 1-558—*Time for Application for confirmation.* At any time within three months after

the award is made, unless the parties shall extend the time in writing, any party to the arbitration may apply to the court for an order confirming the award, and the court shall grant such an order unless the award is vacated, modified, or corrected, as provided in sec. 1-559 and 1-560. Notice in writing of the motion must be served upon the adverse party, or his attorney, five days before the hearing thereof."

"G.S. 1-559—*Order Vacating Award.* In any of the following cases the court shall after notice and hearing make an order vacating the award, upon the application of any party to the arbitration:

(a) Where the award was procured by corruption, fraud or other undue means.

(b) Where there was evident partiality or corruption in the arbitrators, or either of them.

(c) Where the arbitrators were guilty of misconduct, in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence pertinent and material to the controversy; or of any other misbehavior, by which the rights of any party have been prejudiced.

(d) Where the arbitrators exceeded their powers or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made.

Where an award is vacated and the time, within which the agreement required the award to be made, has not expired, the court may, in its discretion, direct a rehearing by the arbitrators."

"G.S. 1-560—*Order Modifying or Correcting Award.* In any of the following cases the court shall, after notice and hearing make an order modifying or correcting the award, upon the application of any party to the arbitration:

(a) Where there was an evident miscalculation of figures, or an evident mistake in the des-

cription of any person, thing or property, referred to in the award.

(b) Where the arbitrators have awarded upon a matter not submitted to them.

(c) Where the award is imperfect in a matter of form not affecting the merits of the controversy.

The order must modify and correct the award, so as to effect the intent thereof."

"G.S. 1-561. Notice of a motion to vacate, modify or correct an award shall be served upon the adverse party, or his attorney, within three months after an award is filed or delivered, as prescribed by law for service of notice of a motion in an action. For the purpose of the motion any judge who might make an order to stay the proceedings, in an action brought in the same court, may make an order to be served with the notice of motion, staying the proceedings of the adverse party to enforce the award."

"G.S. 1-562. Upon the granting of an order, confirming, modifying, correcting or vacating an award, judgment or decree shall be entered in conformity therewith." . . .

. . . . .

"G.S. 1-564. The judgment or decree so entered (or docketed) shall have the same force and effect in all respects, as, and be subject to all the provisions of law relating to a judgment or decree; and it may be enforced, as if it had been rendered in the court in which it is entered."

. . . . .

"G.S. 1-566. This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it."

"G.S. 1-567. This article may be cited as the uniform arbitration act."

* * *

CONSTITUTION OF THE UNITED STATES

Article 3, Section 2

> "Jurisdiction of Courts. The judicial power shall extend to all cases, in law and equity arising under this constitution, the laws of The United States, and treaties made, or which shall be made, under their authority; . . . . between citizens of different states;"

* * * *

Amendment Fifth

> "No person shall . . . be deprived of life, liberty, or property, without due process of law; . . ."

No. 381

JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

CONE MILLS CORPORATION,

Petitioner

v.

TEXTILE WORKERS UNION OF AMERICA,

Respondent

ON PETITION FOR CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

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BRIEF FOR THE RESPONDENT IN OPPOSITION

1. There is no conflict with the decisions of this Court.

Petitioner claims that the decision below is in conflict with *Westinghouse*.[1] The decision below is no more in conflict with *Westinghouse* than was *Lincoln Mills*.[2] *Westinghouse* held, in a case without an arbitration clause, that a union could not sue to enforce individual claims under the collective agreement. *Lincoln Mills* held that, despite *Westinghouse*, a union could sue to enforce an arbitration clause, even if individual rights were involved. In this case there was such a clause, with a provision that the award in arbitration should be final and binding. The Fourth Circuit, following *Lincoln Mills*, held that the reasoning of that case applied equally whether compliance with the arbitration clause was sought before or after the arbitrator's award.

[1] *Association of Westinghouse Salaried Employees v. Westinghouse Electric Corp.*, 348 U.S. 437 (1955).

[2] *Textile Workers Union v. Lincoln Mills*, 353 U.S. 448.

"If there is jurisdiction in one case it would seem there should be jurisdiction in the other." (Pet. App. A-7).

Indeed, petitioner seems ultimately to concede that the present case presents no conflict with *Lincoln Mills*, and to argue instead that "confusion and uncertainty" exist because of the assertion of some that the result reached by this Court in *Lincoln Mills* is inconsistent with *Westinghouse*. (Pet. pp. 8-9) That issue was dealt with in *Lincoln Mills*. There is no reason to reargue it.

2. There is no conflict among the Circuits.

The present decision is fully in accord with the only other decision by a Court of Appeals in which the same issue has been squarely presented. *A. L. Kornman Company v. Amalgamated Clothing Workers*, 264 F. 2d 733 (now pending in this Court on petition for certiorari, No. 131, October Term, 1959). The decisions set forth by petitioner as being "probably" in conflict with the decision below are all *Westinghouse* type cases in which Courts of Appeals have refused to take jurisdiction where a union brought suit, not to compel compliance with an arbitration provision, but for direct enforcement of substantive contract provisions regarding employee benefits.

If, as petitioner seems to believe, it can be argued that *Lincoln Mills* overruled *Westinghouse*, then the case in which that question should be settled is one which follows *Westinghouse*, not one which follows *Lincoln Mills*.

3. There is no constitutional question.

(a) The constitutional question under Article III which is adverted to in the *Westinghouse* case and in Mr. Justice Frankfurter's dissent in *Lincoln Mills* is premised on the proposition that Section 301 is jurisdictional only and that the substantive rights to be enforced in an action brought

under it are, therefore, rights arising under and governed by state law. *Lincoln Mills* held squarely that a substantive federal right to compel compliance with an arbitration provision was created by Section 301. Under that construction, Section 301 presents no constitutional problem. The Court of Appeals in this case simply followed *Lincoln Mills*. Hence, there is no constitutional question here under Article III.

(b) Nor is there any denial of equal protection. Petitioner's equal protection argument is based upon the decision of the Sixth Circuit (Judge Stewart dissenting) that a suit to declare an arbitration award invalid would not lie under Section 301 because it is not a suit to enforce the arbitration provision. *Menge1 Co.* v. *Nashville Paper Prod. & Spec. Wkrs. Union*, 221 F. 2d 644 (6th Cir. 1955). Even if it is assumed that the decision in *Menge1* is good law, despite the subsequent decision of this Court in *Lincoln Mills*, the present case creates no inequality between employers and unions. Both have the right, under Section 301, to enforce arbitration awards. The petitioner's argument that this is inequality is based on the unspoken assumption that only employers refuse to abide by arbitration awards and only unions seek to enforce them. Only on that assumption can it be said that the *Menge1* case denies remedies to employers while the present case grants remedies only to unions.

We do not share that assumption. It is not the fact. *Grunwald-Marx Inc.* v. *Los Angeles Joint Board Amalgamated Clothing Workers*, 44 L.R.R.M. 2628 (Calif., Aug. 5, 1959). Even if it were, there would be no denial of equal protection. An employer can raise as a defense in a union's suit to enforce an award every question which might be raised in a suit, like *Menge1*, to set aside an award. Indeed, petitioner has raised just such questions in its defense to this suit and the Court of Appeals directed the District Court to consider those defenses on remand. (Pet. App.

A-8, A-9) Thus petitioner in this very action has asserted a claim, the denial of the opportunity to assert which it says constitutes a denial of equal protection.

CONCLUSION

For the reasons set forth above, the petition for certiorari should be denied.

Respectfully submitted,

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